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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/812,262

03/29/2004

John Palker

EMC-014 (EMC-04-048)

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EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT

PAPER NUMBER

3637

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/812,262

Applicant(s)

PALKER ET AL.

Examiner

James O. Hansen

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to the amended claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Election/Restrictions***

2. Newly submitted claims 12 & 13 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims are directed to an embodiment that was not elected by applicant in the prior response to the restriction requirement.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 12 and 13 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

As a courtesy, applicant is reminded that any response to this or future actions from the Office, a complete copy of the claim set is required including the text of all withdrawn claims.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 11, the phrase "a plurality of lower guide

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rails" is not properly understood since the limitation may constitute a double inclusion of the previously claimed "at least one lower rail guide" [claim 1]. As such, it is not clear if the lower guide rails is a new and distinct limitation or if the recitation is a reference to the lower rail guide [note that "guide rail" is not the same as "rail guide"]. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 10, 11 & 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmid [U.S. Patent No. 5,626,406]. Schmid (figures 1-5) teaches of a tray (fig. 1) having a front end and a back end, comprising: a base (26) sized for supporting a unit of electronic equipment; a back wall (28) extending perpendicularly from the base at the back end of the tray; and opposing side walls (18) spatially separated by the base and extending perpendicularly therefrom, each side wall extending from the front end to the back end of the tray to abut the back wall, each side wall having a flange (110) at the front end that is capable of attaching the tray to a mounting rail of a cabinet rack, the flange extending perpendicularly to that side wall away from the base, each side wall having at least one upper rail guide (the top 106) and at least one lower rail guide (the bottom 106) integrally formed in and extending laterally from the same side of that side wall, the at least one lower rail guide being spatially separated from and opposite to the at least one upper rail guide, the upper and lower rail guides may slidably engage a portion of a side rail (16 for

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example) when the tray is installed in a cabinet rack. Just for claim 2 purposes, the position is now taken that the upper rail guide is (the bottom 106) and the lower rail guide is (the top 106) since the adjectives “upper and lower” do not descriptively locate the guides relative to the tray [i.e., an “upper rail guide” does not infer the same meaning as “a rail guide located on an upper edge of the side wall”], wherein the at least one upper rail guide has an upwards-facing lip (note fig. 4) and the at least one lower rail guide has a downwards-facing lip (note fig. 4), the upwards-facing and downwards-facing lips may simultaneously slid into respective grooves of a portion of a slide rail when the tray is installed in a cabinet rack. As to claim 3, the at least one upper rail guide and the at least one lower rail guide of each side wall has a horizontal section (note the horizontal section as depicted in fig. 4) extending laterally from that side wall, the horizontal sections opposing each other and being spatially separated such that a portion of a side rail may fit closely in between the horizontal sections. As to claim 10, the front end of the tray is open (fig. 1 depicts an open front end). As to claim 11, the tray further comprising a plurality of lower guide rails (the bottom 80 and the bottom 106 e.g.) integrally formed in and extending laterally from each side wall as best understood by the examiner in view of the outstanding 112(2) rejection disclosed above, the lower guide rails of each side wall being in alignment along a length of that side wall and capable of engaging a side rail when the tray is installed in a cabinet rack. As to claim 15, each flange having an opening (note the opening occupied by element 114) through which a fastener (114) can pass to secure the front end of the tray to a mounting rail of a cabinet rack if so desired.

**Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid.

Schmid teaches applicant's inventive claimed tray as disclosed above, but does not show the tray as being a "single-piece" construction. However, the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the tray as an integrally formed member, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893). Additionally, the use of a one piece construction instead of the structure disclosed in the prior art would be merely a matter of obvious engineering choice. *In re Larson*, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965).

9. Claims 1-4, 11, 14 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harwell [U.S. Patent No. 6,142,590] in view of Tomino [US 2003/0042215]. Harwell (figures 1-18B) teaches of a tray (fig. 17) having a front end and a back end, comprising: a base (bottom of tray) sized for supporting a unit of electronic equipment; a back wall (rearward wall) extending perpendicularly from the base at the back end of the tray; and opposing side walls (left and right side walls) spatially separated by the base and extending perpendicularly therefrom, each side wall extending from the front end to the back end of the tray to abut the back wall,

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each side wall having a flange (note laterally projecting flanges – engaged by elements 40 & 42) at the front end that is capable of attaching the tray to a mounting rail of a cabinet rack, the flange extending perpendicularly to that side wall away from the base, each side wall having at least one upper rail guide (denoted by 192). As to claim 4, Harwell further teaches of a tab (214) projecting perpendicularly from the base of the tray and effectively partitioning the base into two sections. As to claim 14, each section is capable of receiving a separate unit of electronic equipment. As to claim 15, each flange having an opening (fig. 17) through which a fastener (40, 42) can pass to secure the front end to a mounting rail if so desired. Harwell teaches applicant's inventive claimed tray as disclosed above, but does not show at least one lower rail guide integrally formed in and extending laterally from the same side of that side wall, with the at least one lower rail guide being spatially separated from and opposite to the at least one upper rail guide, and the upper and lower rail guides being slidably engageable to a portion of a side rail when the tray is installed in a cabinet rack.

Tomino (figures 1-8B) is cited as an evidence reference to show that it was known in the server tray art to provide integral upper and lower rail guides (fig. 3A) on side walls (146) of a tray (140), wherein the at least one upper rail guide has an upwards-facing lip (note fig. 3A) and the at least one lower rail guide has a downwards-facing lip (note fig. 3A), the upwards-facing and downwards-facing lips may simultaneously slid into respective grooves of a portion of a slide rail when the tray is installed in a cabinet rack. As to claim 3, the at least one upper rail guide and the at least one lower rail guide of each side wall has a horizontal section (note the horizontal section as depicted in fig. 3A) extending laterally from that side wall, the horizontal sections opposing each other and being spatially separated such that a portion of a side rail may fit closely in

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between the horizontal sections. As such, the position is put forth that it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Harwell's side walls with both upper and lower rail guides as taught by Tomino because this arrangement would enhance the stability of the tray when inserted within a slide rail while enhancing the sliding motion of the tray since the load of the tray would be evenly distributed among the upper and lower rail guides.

### **Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Noh, Liu et al., Peng and Cheng describe various tray structures.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James O. Hansen  
Primary Examiner  
Art Unit 3637

JOH  
March 19, 2007